

ORDINANCE NO. \_\_\_\_\_ Series 2009

AN ORDINANCE ENACTING A NEW SECTION OF CHAPTER 37 OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES [LMCO] TO ESTABLISH LABOR STANDARDS FOR PUBLIC PROJECTS FUNDED WITH PUBLIC FUNDS OR PRIVATE ACTIVITY PROJECTS RECEIVING PUBLIC SUPPORT THROUGH TAX INCREMENT FINANCING, GENERAL OBLIGATION BONDS, DIRECT PAYMENTS, PROPERTY TAX ABATEMENTS, THE USE OF PUBLIC FUNDS, TAX SUBSIDIES, TAX CREDITS, TAX REBATES, PUBLIC/PRIVATE PARTNERSHIPS, ACCESS TO PUBLIC ASSETS OR ASSISTANCE PROVIDED BY PUBLIC AGENCIES [AS AMENDED]

Sponsored by: Councilman Jim King, Councilman Rick Blackwell, Councilwoman Mary Woolridge, Councilman Dan Johnson , and Councilwoman Vicki Aubrey Welch

**WHEREAS**, the Metro Council of the Consolidated Government of Metro Louisville (the Metro Council) is routinely required to endorse or approve public projects funded with public funds, and

**WHEREAS**, the Metro Council is from time to time requested to endorse or approve tax increment financing, general obligation bonds, direct payments, property tax abatements, industrial revenue bonds, tax credits, tax rebates or similar benefits for private developers seeking public/private partnerships, public assistance or access to public assets, and

**WHEREAS**, Metro Louisville has a well trained, highly educated, **and** **diverse** work force, and

**WHEREAS**, it is the will of the Metro Council that any public or private activity construction projects in Metro Louisville that receive substantial public funds or public tax subsidies such as ~~tax credits or tax rebates~~, **increment financing, general obligation bonds or property tax abatements**, or that receive access to public assets or public assistance in any form (subsidized projects) provide opportunities for local contractors and local labor, and

**WHEREAS**, it is the will of the Metro Council that any subsidized construction projects in Metro Louisville provide opportunities for minority owned and women owned businesses **and minority and female members of the workforce** based in Metro Louisville, and

**WHEREAS**, it is the will of the Metro Council that any subsidized construction projects in Metro Louisville provide opportunities for both union and non-union contractors that comply with all federal and state employment laws, and

**WHEREAS**, it is the will of the Metro Council that ~~any union and non-union~~ **all** labor employed on subsidized construction projects receive a competitive package of wages, benefits and training,

**NOW THEREFORE, BE IT ORDAINED** by the Louisville/Jefferson County Metro Council as follows:

**SECTION I:** A new Section of LMCO Chapter 37 is hereby enacted to read as follows:

## **PUBLICLY FUNDED OR SUBSIDIZED PROJECTS**

### **A. DEFINITIONS**

***CERTIFIED FEMALE OWNED BUSINESS:*** A business enterprise legally constituted under the laws of the state, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, which enterprise is not an affiliate or a subsidiary of a business dominant in its field of operation and has employees identified in its own payroll records, working specifically for such entity and which entity is majority owned and controlled by a person or a combination of persons who are female and legal residents of the United States. **A female owned business enterprise shall be certified through the Women Business Enterprise National Council (WBENC), the Metropolitan Sewer District (MSD), or a sworn affidavit establishing the company to be female owned.**

***LOUISVILLE METROPOLITAN STATISTICAL AREA (MSA):*** As defined by the United States Census Bureau **(currently comprising a 13 county area).**

***MINORITY:*** Any legal resident of the United States having ethnic origin in the black racial groups of Africa; a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures; a person having ethnic origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, Korea,

China, the Philippines, Malaysia, Hawaii, and Samoa; a person having origins in any of the original peoples of North America who is an enrolled member of an Indian tribe recognized as such by the government of the United States or Canada; or a person having origins in the Eskimo or Aleut peoples and who is recognized as such by either a tribe, tribal counsel, or a suitable authority in the community, which authority may be an educational institution, religious organization, or a federal or state agency.

***CERTIFIED MINORITY OWNED BUSINESS:*** A business enterprise legally constituted under the laws of the state, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, which enterprise is not an affiliate or a subsidiary of a business dominant in its field of operation and has employees identified in its own payroll records, working specifically for such entity and which entity is majority owned and controlled by a person or a combination of persons who are minorities and legal residents of the United States. **A minority owned business enterprise shall be certified through the Kentucky Minority Business Council, the Metropolitan Sewer District, or a sworn affidavit establishing the company to be minority-owned.**

***PREVAILING WAGE:*** The wages **and benefits** typically paid for services rendered by any particular profession or trade **as defined in LMCO Section**

**37.12.** as determined pursuant to KRS 337.505 (1) and KRS 337.520 (3)(a),(b),(c) to wit:

- KRS 337.505 (1) The basic hourly rate paid or being paid subsequent to the executive director's most recent wage determination to the majority of laborers, workmen, and mechanics employed in each classification of construction upon reasonably comparable construction in the locality where the work is to be performed (Louisville/Jefferson County); such rate shall be determined by the executive director in accordance with paragraphs (a), (b), and (c) of subsection (3) of KRS 337.520; in the event that there is not a majority paid at the same rate, then the basic hourly rate of pay shall be the average basic hourly rate which shall be determined by adding the basic hourly rates paid to all workers in the classification and dividing by the total number of such workers.
- KRS 337.520 (3) The executive director shall have the authority to determine schedules and current revisions of the rates of prevailing wages as defined in KRS 337.505 but in no case shall the executive director determine wages to paid for a legal day's work to laborers, workmen and mechanics engaged in the construction of public works at less than the prevailing wages paid in the localities (Louisville/Jefferson County). The executive director, in determining what rates of wages prevail, shall consider the following criteria:

- (a) Wage rates paid on previous public works constructed in the localities (Louisville/Jefferson County). In considering the rates, the executive director shall ascertain, insofar as practicable, the names and addresses of the contractors, including subcontractors, the location, approximate costs, dates of construction and types of projects, the number of workers employed on each project, and the respective wage rates paid each worker who was engaged in the construction of these projects.
- (b) Wage rates previously paid on reasonably comparable private construction projects constructed in the localities (Louisville/Jefferson County). In considering the rates the executive director shall ascertain, insofar as practicable, the names and addresses of the contractors, including subcontractors, the location, approximate costs, dates of construction and types of projects, the number of workers employed on each project, and the respective wage rates paid each worker who was engaged in the construction of these projects.
- (c) Collective bargaining agreements or understandings between bona fide organizations of labor and their employers located in the Commonwealth of Kentucky which agreements apply or pertain to the localities (Louisville/Jefferson County) in which the public works are to be constructed.

***TAX SUBSIDIZED PROJECTS:*** Any construction project in Louisville/Jefferson County funded through tax increment financing, general obligation bonds, direct metro payments, or property tax abatements ~~that receives public funds, public tax subsidies, forgiveness of public debt or liability, or that receives access to public assets or public assistance in any form in an amount over \$250,000.~~ \$500,000. Tax credits or tax reductions provided by Kentucky State employment incentive programs such as the Kentucky Jobs Development Act, KDFA, KIDA are exempt from this provision.

## **B. LABOR STANDARDS**

1. Any tax subsidized projects in Louisville/Jefferson County shall receive such subsidy only if the developer, general contractor and all subcontractors on the project comply with the following minimum labor standards established by the Metro Council:

a. The payment of prevailing wages **and benefits**, as established for each profession or trade used on the project **pursuant to KRS 337.505 (1) and KRS 337.520 (3)(a),(b),(c) based on wage rates paid on previous public and private construction projects as submitted from time to time to the Kentucky Department of Labor by contractors and subcontractors operating in Louisville/Jefferson County. A contractor's failure to meet the prevailing wage standard will result in a 20% reduction in the contractor's public bid reviews for a period of one year following completion of the subject project.** A contractor or subcontractor seeking

the award of a public project shall not have been cited found by the Kentucky Labor Cabinet to have been in for violation of the Prevailing Wage laws twice within a the previous three [3] year period.

b. A **measurable and documented** goal of at least 20% minority participation, including **minorities and certified** minority owned businesses, for all employees and contractors on the project. **Failure to meet this goal shall result in a 20% reduction in the contractor's future public bid reviews for a period of one year following completion of the subject property. Contractors exceeding this goal shall be afforded a 10% increase in its public bid reviews until the contractor is awarded another public project.**

c. A **measurable and documented** goal of at least 5% women participation, including **females and certified** female owned businesses, for employees and contractors on the project. **Failure to meet this goal shall result in a 20% reduction in the contractor's future public bid reviews for a period of one year following completion of the subject project. Contractors exceeding this goal shall be afforded a 10% increase in their public bid reviews until the contractor is awarded another public project.**

d. Employment Opportunities for both union and non-union employees and contractors.

e. A **measurable and documented** goal that at least 75% of Project jobs are given to ~~Kentucky and Indiana~~ residents of the Louisville MSA. **Failure**



to meet this goal shall result in a 20% reduction in the contractor's future public bid reviews for a period of one year following completion of the subject project. Contractors exceeding this goal shall be afforded a 10% increase in their public bid reviews until the contractor is awarded another public project.

~~f. A goal that at least 60% of Project jobs are given to residents of the Louisville MSA~~

~~g.f.~~ Participation by all project contractors in formal training programs (recognized by the US Department of Labor and/or State accrediting organizations) for employees in their respective professions or trades. **Contractors whose employees participate in formal training programs in their respective professions or trades recognized by the US Department of Labor or the Kentucky Labor Cabinet shall be afforded a 10% increase in public bid reviews.**

~~h.g.~~ Adherence to a zero tolerance drug policy with respect to alcohol and illicit drug use.

~~h. h.~~ Opportunities provided by project contractors for all workers to have access to working on a project as defined in this section shall be covered by a health benefit plan.

~~h. i~~ Verification of the work status of all employees through the E-Verify Program operated jointly by the U.S. Department of Homeland Security and the Social Security Administration or any similar successor program.

~~K~~ j. All contractors shall be in Compliance with all rules, regulations, and requirements of the Procurement Code as adopted by Metro Government.

### **C. COMPLIANCE AND MAINTENANCE OF RECORDS**

(1) All developers, general contractors and, subcontractors on any project covered by this subchapter shall keep full and accurate records covering all disbursements of wages to their employees to whom they are required to pay at least prevailing wages. Such records shall indicate the hours worked each day by each employee for his or her work in each classification. They shall be open to the inspection of and copying by an authorized representative of Metro Government at any reasonable time, and shall be in compliance with all regulations issued by Metro Government. Records produced for inspection under this subchapter shall be submitted with a certification, under oath, that the records tendered are accurate and presented for the purpose of obtaining continued public funding or incentives. These payroll records and certifications shall not be destroyed or removed from the Metro Government for one year following the completion of the improvement in connection with which they are made. Records maintained by Metro Government shall be subject to all terms of the Kentucky Open Records Act.

(2) Each contractor and subcontractor subject to the provisions of this subchapter shall post and keep posted in a conspicuous place or places at the site of the construction work a copy or copies of prevailing rate of wages and

working hours, showing the rates of wages prescribed and the working hours for each class of laborers, workers, and mechanics employed by him or her in the work of constructing the tax subsidized project.

(3) Every employer shall permit an authorized agent of Metro Government to question any of his or her employees at the site of the tax subsidized project and during work hours in respect to that wages paid, hours worked and duties of such employee or other employees. ~~For purposes of this section, the term “authorized agent” shall include members of the Metro Council and their respective agents or designees.~~

(4) While the foregoing guidelines on the utilization of minorities, **certified** minority owned businesses, females, **certified** female owned businesses, and utilization of residents as employees and contractors are recommended goals, failure to meet such goals will not result in disqualification from participation in the receipt of particular funds or incentives. Developers, contractors, and subcontractors **however**, ~~however, will be expected to~~ **must** provide sworn affidavits ~~written reports~~ to the Executive Director of the Human Relations Commission describing ~~of~~ efforts they have made **to achieve the goals established by this ordinance to** utilize **as subcontractors or employees;** minorities, **certified** minority owned businesses, females, **certified** female owned businesses, and local residents. **Reference is made to Section B (a), (b), (c) and (e) above for incentives earned when a contractor exceeds the stated goals.**

**D. PENALTIES** Any appropriation or subsidy covered by this section shall be subject to revocation by a public contracting authority in the event of non-performance of the requirements of this section by a recipient of appropriations or subsidies covered by this section. **Reference is made to Section B (a), (b), (c) and (e) above for disincentives pertaining to a contractor's failure to achieve the stated goals.**

**E. SEVERABILITY** If any provision of this chapter as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

**SECTION II: EFFECTIVE DATE** This ordinance shall take effect upon its passage and approval. **This ordinance shall pertain to construction project agreements established after the effective date.**

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**Kathleen J. Herron**  
**Metro Council Clerk**

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**David W. Tandy**  
**President of the Council**

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**Jerry E. Abramson**  
**Mayor**

**Approved:** \_\_\_\_\_  
**Date**

**APPROVED AS TO FORM AND LEGALITY:**

**Michael J. O'Connell**  
**Jefferson County Attorney**

**BY:**\_\_\_\_\_

**Labor Standards: Filed version 2-22-09 – ROC-m**

**Changes as of 6 March 2009 – ROC – ml/bw**

**Labor Standards: Committee amendments through 19 March 2009 – roc/ml/bw**

**Labor Standards: Committee amendments through 2 April 2009 – roc/ml/bw**